

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number: EB-07-TP-180
Marckenson Bazile	)	
	)	NAL/Acct. No. 200832700001
Tampa, Florida	)	
	)	FRN: 0016893083
	)	

**FORFEITURE ORDER**

**Adopted:** December 11, 2007

**Released:** December 13, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand four hundred fifty dollars (\$1,450) to Marckenson Bazile for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).<sup>1</sup> The noted violations involve Mr. Bazile’s operation of an unlicensed radio transmitter.

**II. BACKGROUND**

2. While investigating an unauthorized broadcast station in the Port St. Lucie, Florida area, on August 7 and 8, 2007, agents from the Commission’s Tampa Office of the Enforcement Bureau (“*Tampa Office*”) monitored broadcast transmissions on 100.9 MHz in Port St. Lucie, Florida. The agents, using direction finding techniques, located the transmissions to an antenna mounted on a house in Port St. Lucie, Florida. A search of the St. Lucie County Property Appraiser records confirmed that the property is owned by Mr. Bazile. The agents also confirmed that one of the vehicles parked at this residence was registered to Mr. Bazile. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“*Rules*”) and therefore required a license.<sup>2</sup> A search of the Commission’s databases revealed no authorization for a broadcast station on that frequency at that address.

3. On August 16 and 17, 2007, agents from the Tampa Office again monitored broadcast transmissions on 100.9 MHz in Port St. Lucie, Florida. The agents found that the antenna had been removed from Mr. Bazile’s residence. The agents, using direction finding techniques, located the transmissions to an antenna mounted to a commercial plaza in Port St. Lucie, Florida. The agents traced a coaxial cable from the antenna into a suite leased by Ti Pouchon Caribbean Sound LLC. According to the Florida Department of State Corporations database, Mr. Bazile’s residence is Ti Pouchon Caribbean Sound LLC’s mailing address and Mr. Bazille is its registered agent. The agents noted Mr. Bazille’s

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. On August 7 and 8, 2007, the measurements indicated that the signals were 5,948, and 5,696 times greater, respectively, than the maximum permissible level for a non-licensed Part 15 transmitter.

vehicle parked at this location on August 17, 2007. The agents also observed that the antenna had similar characteristics to the antenna that was previously observed at Mr. Bazile's residence. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license.<sup>3</sup> A search of the Commission's databases revealed no authorization for a broadcast station on that frequency at that address.

4. On August 18, 2007, agents from the Tampa Office interviewed Mr. Bazile. He stated that he was responsible for the Ti Pouchon Caribbean Sound business. He admitted that he owned the transmitter and had been operating the station using various DJ names from that location for the past two days.

5. On October 30, 2007, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Bazile in the amount of ten thousand dollars (\$10,000) for the apparent willful and repeated violation of Section 301 of the Act.<sup>4</sup> Mr. Bazile submitted a response to the *NAL* requesting reduction or cancellation of the forfeiture.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Bazile's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

7. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. In particular, Section 301 states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter."<sup>8</sup> Agents from the Tampa Office determined that, on August 7 and 8, 2007, an unlicensed radio station operated on 100.9 MHz from Mr. Bazile's residence in Port St. Lucie, Florida. Agents from the Tampa Office also determined that, on August 16 and 17, 2007, an unlicensed radio station operated on 100.9 MHz from Mr. Bazile's business in Port St. Lucie, Florida. Mr. Bazile admitted to operating the radio station from his business location for two days. Thus, based on the evidence, we find that Mr. Bazile willfully<sup>9</sup> and

<sup>3</sup> Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. On August 16 and 17, 2007, the measurements indicated that the signals were 11,575, and 10,992 times greater, respectively, than the maximum permissible level for a non-licensed Part 15 transmitter.

<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700001 (Enf. Bur., Tampa Office, October 30, 2007) ("*NAL*").

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> 47 U.S.C. § 301.

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed

repeatedly<sup>10</sup> violated Section 301 of the Act by operating an unlicensed radio transmitter.

8. In his response to the *NAL*, Mr. Bazile does not dispute that he operated an unlicensed radio transmitter on August 16 and 17, 2007. Rather he asserts he was unaware that his operation of the radio station without a license was in violation of the Act. It is well established, however, that a willful violation may occur, “irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act.”<sup>11</sup> Thus, because Mr. Bazile intended to operate the radio station, his actions were willful. He also states that he started the station for altruistic purposes and that the station broadcast primarily educational, religious and news programming in French and Creole. However, Section 301 of the Act does not exempt operators of radio stations that broadcast educational, religious, or news programming from the licensing requirement. Accordingly, we find no basis upon which to cancel the forfeiture.

9. In addition, Mr. Bazile asserts that a \$10,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>12</sup> After reviewing Mr. Bazile's financial documentation, we conclude that a reduction of the forfeiture to \$1,450 would be appropriate.

10. We have examined Mr. Bazile's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Bazile willfully and repeatedly violated Section 301 of the Act. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$1,450 is appropriate based on his demonstrated inability to pay.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Marckenson Bazile **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand four hundred fifty dollars (\$1,450) for violation of Section 301 of the Act.<sup>13</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

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under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>11</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>12</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>13</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.<sup>14</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>15</sup>

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Marckenson Bazile at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.